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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/033,713

12/27/2001

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8628

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10/30/2008

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/033,713

Applicant(s)

WEI, ZHANG SHAO

Examiner

JACK H. MORGAN JR

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-37 and 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-37 and 40-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 48 and 49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant claims "a closure consisting essentially of a hollow cylinder having an open first end and an open second end" in claim 32. Then in claims 48 and 49 applicant claims that said second end of the closure is sealed and has a transfigurible slit near the second end. It is not possible for something to consist essentially of a open second end, when said second end is sealed. This structure (having an open, sealed end) is not set forth in the specification, and as such, does not meet the enablement requirement.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 48 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims "a closure consisting essentially of

a hollow cylinder having an open first end and an open second end" in claim 32. Then in claims 48 and 49 applicant claims that said second end of the closure is sealed and has a transfigurible slit near the second end. It is not possible for something to consist essentially of a open second end, when said second end is sealed. This structure (having an open, sealed end) does not appear to be possible, as open and sealed have opposed meanings. As such, the claims are indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 32, 34, 35, 43, 44 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Lake (US 4,095,295). Lake discloses a flexible container for liquid cleanser (insofar as liquid cleanser is set forth in the claims, both the water and saline solutions disclosed by Lake meet the claimed term), having two flexible members forming a chamber (10) having a modulus of elasticity conducive to inflation, the chamber containing a liquid cleanser (see above) and a closure (4) consisting essentially of a hollow cylinder having open first and second ends, having a flexible base attached to at least one of the flexible members and a stopper (6) for insertion into the interior of said open first end of the hollow cylinder, the container including a hanger

(5), the flexible members forming a chamber having a recognizable shape, the shape being a geometric shape (circle).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 32, 34, 35, 42-44, 46 and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Russell (US 4,842,563). Viegas discloses a flexible container for liquid cleanser (Fig 1) having two flexible members (10, large flat sides) having a modulus of elasticity conducive to liquid containment and gaseous inflation, the chamber containing liquid cleanser, specifically, liquid soap (Col 1, lines 8-13) and a closure having a hollow cylinder (31), having an open first end (Fig 30, bottom), and an open second end (50) and having a flexible base (19) coupled to the flexible members (see Fig 1) for repetitive filling and expelling of liquid cleanser in response to squeezing force applied to the members and a stopper (62) to seal the hollow cylinder, the container further comprising a hanger (4, 6). Based on applicants remarks of December 5, 2006, it is well settled that soap is an emulsifier (page 10), therefore, Viegas discloses a liquid emulsifier. Viegas further discloses the flexible members forming a chamber having a recognizable shape, specifically a geometric shape, rectangular. Viegas does not disclose the closure consisting

essentially of a hollow cylinder with open first and second ends, instead disclosing partially closing one of the ends with a slitted member. Russell discloses a flexible cylindrical closure (Fig 2) of similar design to the one of Viegas having only open first and second ends, and further having a stopper (42) for insertion into the interior of the open first end of the cylinder. It would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Viegas with the closure of Russell in order to allow more material to flow through the closure by removing the slitted member restricting flow.

5. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Russell (US 4,842,563) as applied to claim 32 above and further in view of Besse et al. (US 5,810,201). Viegas discloses all the limitations of the claims, including a hanger attached to the flexible members, but does not disclose the flexible members formed of vinyl material. Besse et al. disclose a similar container which holds liquid soap (Fig 2, 21) which is created from polyvinyl chloride (Col 6, line 3), which is a well known flexible plastic. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Viegas out of polyvinyl chloride as taught by Besse et al. as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 36, 37, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Russell (US 4,842,563) as applied to claims 32 and 34 above and further in view of Haugk et al. (US 5,937,554). Viegas discloses all the limitations of the claims except for an insert suspended in the liquid cleanser, of a predetermined size that prevents expulsion of the insert from the container via the flexible closure. Haugk et al. disclose a container with a film insert in the container, and unattached to any interior surface, in a similar container as those known in the art to be used for liquid soaps and other cosmetics in order to add a three dimensional decorative design to the container. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Viegas with the insert of Haugk et al. in order to add a three dimensional decorative design to the interior of Viegas' container.

7. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Russell (US 4,842,563) as applied to claims 32 and 34 above and further in view of Flackett et al. (US 6,343,712). Viegas discloses all the limitations of the claim except for the recognizable shape being an animal shape. Flackett et al. disclose a liquid dispenser for use with liquid soap, having a similar closure design (Fig 6, 32) to Viegas which is formed in the shape of an animal (specifically, a lizard) as a decorative feature. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Viegas in the animal shape taught by Flackett et al. in order to improve the aesthetic qualities of the liquid soap dispenser.

8. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Russell (US 4,842,563) as applied to claims 32 and 34 above and further in view of Henning et al. (US 3,623,638). Viegas discloses all the limitations of the claim except for the recognizable shape being a flower design. Henning et al. disclose a liquid dispenser for use with liquid soap (Fig 1) that is formed in the shape of a flower (12) (specifically, a sunflower) as a decorative feature. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Viegas in the flower shape taught by Henning et al. in order to improve the aesthetic qualities of the liquid soap dispenser.

Response to Arguments

9. Applicant's arguments with respect to claims 32 and 34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782